STATE OF MICHIGAN

COURT OF APPEALS

SUSAN C. REVOLT,

Plaintiff-Appellant,

v

JOHN J. REVOLT,

Defendant-Appellee.

UNPUBLISHED
February 23, 1999

No. 213315
Manistee Circuit Court
LC No. 96-008192 DM

Before: Markey, P.J., and Saad and Collins, JJ.

PER CURIAM.

Plaintiff appeals as of right right from a judgment of divorce issued after a bench trial, by which the trial court ordered that the marriage between plaintiff and defendant be dissolved, that no spousal support be allowed, that assets be divided between the parties such that defendant receive the marital home, and that both parties be responsible for their own debts and attorney fees. The court also granted defendant primary physical custody of the parties' two children. We remand this case for further findings.

Plaintiff argues that the trial court made inadequate findings in four respects. She claims that the court failed to determine whether there existed an established custodial environment, that the court did not adequately address the twelve factors enumerated in the child custody statute, MCL 722.23; MSA 25.312(3), that the court failed to articulate its reasons for denying an award of alimony, and that the court failed to assign values to the property in the marital estate or provide any rationale for the division of property between the parties. We agree.

Custody disputes are to be resolved based on the best interests of the children, as measured by the twelve factors set forth in MCL 722.23; MSA 25.312(3). *Bowers v Bowers*, 198 Mich App 320, 327-328; 497 NW2d 602 (1993). The trial court is required to consider each of these factors and explicitly state its findings and conclusions regarding each. *Id.* at 328. Whether a custodial environment exists is a question of fact, which the trial court must address before ruling on the child's best interests. *Overall v Overall,* 203 Mich App 450, 455; 512 NW2d 851 (1994). An established custodial

environment exists "if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort." MCL 722.27(1)(c); MSA 25.312(7)(1)(c); *Bowers, supra* at 325. Other factors the court must consider include the age of the child, the physical environment, and the permanency of the parent-child relationship. *Id.* Custody orders, by themselves, do not establish a custodial environment. *Id.* Although a "court shall not . . . change the established custodial environment of a child unless there is presented clear and convincing evidence that [such change] is in the best interests of the child," MCL 722.27(1)(c); MSA 25.312(7)(1)(c), if there exists no established custodial environment, custody is determined based upon a showing by a preponderance of the evidence that a particular placement is in the child's best interests. *Bowers, supra* at 324.

The trial court in this case stated that defendant had primary custody of the children during the divorce proceedings. However, it did not specifically state whether it found an established custodial environment. Such a finding is necessary in order to establish the parties' burdens of proof. Thus, on remand, the trial court must make a finding with regard to whether there existed a custodial environment with one of the parties. Furthermore, with regard to custody of the minor children in this case, the judgment of divorce states only that "[d]efendant . . . shall have primary physical custody of the minor children of the parties." The trial court issued an interim opinion in which it cited the successful school and community record of the children, the time defendant has had custody of the children, and the children's continued occupancy of the family home. Although these considerations implicate three of the factors enumerated in the child custody statute, the trial court failed to make findings of fact regarding the other factors. On remand, the court must make findings of fact with express reference to each of the twelve factors enumerated in the statute. Such findings are necessary because this Court is required to review whether the trial court's findings were against the great weight of the evidence. MCL 722.28; MSA 25.312(8); *Fletcher v Fletcher*, 447 Mich 871, 876-877 (Brickley, J.), 900 (Griffin, J.); 526 NW2d 889 (1994); *York v Morofsky*, 225 Mich App 333, 335; 571 NW2d 524 (1997). Absent express findings of fact, this Court is unable to undertake such a review.

Similarly, specific factors are to be considered before a court makes a determination regarding alimony. *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991). The award of alimony is based on what is just and reasonable, given the circumstances of the case. *Id.* at 307. Among the factors that should be considered are: (1) the past relations and conduct of the parties; (2) the length of the marriage; (3) the abilities of the parties to work; (4) the source and amount of property awarded to the parties; (5) the parties' ages; (6) the abilities of the parties to pay alimony; (7) the present situation of the parties; (8) the needs of the parties; (9) the parties' health; (10) the prior standard of living of the parties and whether either is responsible for the support of others; (11) contributions of the parties to the joint estate; (12) a party's fault in causing the divorce; (13) the effect of cohabitation on a party's financial status; and (14) general principles of equity. *Ianitelli v Ianitelli*, 199 Mich App 641, 644; 502 NW2d 691 (1993); *Thames, supra*. It is not enough to make a general statement that "neither party is entitled to alimony." *Daniels v Daniels*, 165 Mich App 726, 732; 418 NW2d 924 (1988). In this case, the judgment of divorce states only that "any spousal support shall be forever barred."[1] On remand, the trial court must make specific findings applying the relevant factors listed above.

A judgment of divorce must include a determination of the property rights of the parties. MCR 3.211(B)(3); *Yeo v Yeo*, 214 Mich App 598, 601; 543 NW2d 62 (1995). The property division need not be mathematically equal, but any significant departure from congruence must be clearly explained by the trial court. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). A trial court's findings of fact regarding the property division are sufficiently specific if the parties are able to determine the approximate values of their individual awards by consulting the verdict. *Nalevayko v Nalevayko*, 198 Mich App 163, 164; 497 NW2d 533 (1993). In this case, although two real estate appraisers testified about the value of the marital home, the trial court did not state which value it used in determining how the estate should be divided. The trial court also failed to state in the judgment of divorce what value it attached to all other marital assets, including tools and guns awarded to defendant and a vehicle and mower awarded to plaintiff. On appeal, this Court is required to review whether a trial court's valuations of particular marital assets were clearly erroneous. *Pelton v Pelton*, 167 Mich App 22, 25; 421 NW2d 560 (1988). Because no valuations were stated in the lower court's judgment, such a review is impossible. Moreover, because the trial court failed to adequately articulate its reasons for dividing the marital estate in what appears, at least on the face of the award, to be an incongruous manner, this Court cannot determine whether the division was fair and equitable. See *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). Therefore, on remand, the trial court must make findings of fact with regard to the value of all significant marital assets and explain its rationale for dividing the marital estate as it did.

Plaintiff next contends that the trial court's failure to award attorney fees was error. We agree. An award of legal fees in a divorce action is authorized when it is necessary to enable the party to carry on or defend the suit. MCR 3.206(C)(2); *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 664 (1993). In this case, plaintiff testified that she earned a gross salary of $206 per week when the trial started and was unemployed when the trial ended. It is unlikely that she could or can afford to carry on or defend a suit given her earnings. Plaintiff's attorney fees now total over $16,000. Thus, plaintiff would not only have to spend the entire $15,000 awarded to her to pay her fees, but would also have to liquidate assets. This Court has held that a party may not be required to invade her assets to pay attorney fees when she is relying on the same assets for her support. *Maake*, *supra* at 189. We therefore conclude that the trial court abused its discretion when it failed to award any attorney fees. *Id.* On remand, after reconsideration of the alimony and property issues, the trial court shall determine the amount of attorney fees plaintiff can reasonably afford and instruct defendant to pay the balance of plaintiff's attorney fees.

Finally, we reject defendant's argument that MCR 2.517(B) required plaintiff to move for amended findings in the trial court before filing an appeal. MCR 2.517(A)(6) states that "[r]equests for findings are not necessary for purposes of review." We also reject defendant's argument that plaintiff raised frivolous issues below. We are not persuaded that either party is beyond reproach in this regard.

Remanded for further findings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Henry W. Saad
/s/ Jeffrey G. Collins

[1] Defendant correctly points out that the trial court stated that the award to plaintiff of $15,000 was made "in lieu of any additional payment for spousal support or attorney fees." However, this was ostensibly part of the property settlement and could not properly be credited to spousal support as well, at least not without further explanation of the reasons for doing so. As previously noted, the amount of property awarded to a party is a valid consideration in determining spousal support questions. *Thames, supra* at 308.